

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**AT BECKLEY**

CENTER FOR BIOLOGICAL DIVERSITY,  
*et al.*,

*Plaintiffs,*

v.

UNITED STATES FOREST SERVICE, *et al.*

*Defendants,*

v.

SOUTH FORK COAL COMPANY, LLC,

*Defendant-Intervenor.*

Civil Action No. 5:24-cv-00274 (Judge Volk)

**DECLARATION OF JAMES R. WEBB**

I, James R. Webb, state and declare as follows:

1. The following facts are personally known to me and, if called as a witness, I could and would truthfully testify to these facts.
2. I currently reside in Highland County, Virginia.
3. My property is located in an area surrounded by the George Washington and the Monongahela National Forests and other public conservation lands. This region, which includes the Forest Service roads impacted by the commercial road use permit (“RUP”) and the actions connected to the RUP, including the Rocky Run Mine Project area, lies at the center of the central Appalachian Highlands’ remnant wild landscape and high-integrity forested mountain watersheds. I appreciate and am intensively engaged in the exceptional recreational opportunities that this type of pristine habitat provides, including native brook trout fishing, remote county

hiking, birding, and a range of natural history studies. I have long been dedicated to the preservation of this exceptional mountain region.

4. I currently serve on the board of directors of the West Virginia Highlands Conservancy. The West Virginia Highlands Conservancy has approximately 1,500 members and is a nonprofit membership organization located in West Virginia. For over five decades, the West Virginia Highlands Conservancy has been a leader in citizen efforts to protect West Virginia's land and water resources from environmental damage. The West Virginia Highlands Conservancy promotes, encourages, and works for the conservation—including both preservation and management—of the natural resources of West Virginia and the Nation. The West Virginia Highlands Conservancy focuses primarily on the Highlands Region of West Virginia, but its work is for the cultural, social, educational, physical health, spiritual and economic benefit of present and future generations of residents and visitors alike.

5. I am also involved in many other organizations that are dedicated to ecological integrity and conservation in the central Appalachian Highlands region. I am currently on the board of directors of the Allegheny-Blue Ridge Alliance (“ABRA”), and I am an active member of the Cowpasture River Preservation Association, the Jackson River Preservation Association, the Virginia Society of Ornithology, Trout Unlimited, the Sierra Club, and the Virginia Wilderness Committee.

6. I became a member of the West Virginia Highlands Conservancy in the early 1970s because I was living in an area that was being impacted by coal mining and looked for groups that were working to confront the impacts of coal mining. West Virginia Highlands Conservancy was one of the only groups working to address these issues at the time, and it has

maintained its purpose and expanded its efforts to protect sensitive ecological areas that I've come to professionally and personally be interested in and involved with in my career.

7. I became a member of the Sierra Club in 2014. At that time, the Sierra Club was joining in the opposition to Atlantic Coast Pipeline, which would have cut across the ecologically important West Virginia Highlands, and they and other groups successfully prevented the pipeline's construction.

8. In 1992 I was named Professional Conservationist of the Year, a national award, by Trout Unlimited. In 2017 I received the Jackson M. Abbot Conservation Award from the Virginia Society of Ornithology.

9. In 1988 I received a Master of Science in Environmental Sciences from the University of Virginia, where I spent my career studying the biogeochemistry and ecology of undisturbed watersheds that support brook trout. I retired as a Senior Scientist in 2014. My research at the University of Virginia included management of numerous water quality studies in the central Appalachian region. I planned and coordinated three decadal surveys of 450 to 500 streams and routine sampling of a representative subset of 65 streams every three months beginning in 1987. I also coordinated more intensive studies of smaller sets of streams and conducted soil research. I established sampling sites, developed water and soil sample collection and analysis protocols, conducted sampling and analysis, coordinated sampling by natural resource agency and University of Virginia personnel, and published multiple reports and papers in scientific journals describing results of stream and soil research and monitoring. I remain affiliated with and deeply interested in the work of the University of Virginia team that continues the data collection and research programs.

10. My research emphasis during my years at the University of Virginia concerned the effects of air pollution, land use change and disturbance, and other environmental stressors on streams and watersheds in the Central Appalachian Highlands region of Virginia and West Virginia, with an emphasis on streams and watersheds in National Forests and other public lands. My involvement in stream data collection included measurement and analysis of a range of natural solutes associated with soils and rock, such as calcium and magnesium, and solutes associated with air pollution, such as sulfur and nitrogen. Additional measurements included pH, water temperature, turbidity or suspended sediment concentrations, and electrical conductivity. I also studied the relationship between water quality and fish species distribution. The streams, which were the focus of my work, are, like most of the undisturbed mountain streams in the region, characterized by high clarity, low concentrations of dissolved ions, and a lack of sedimentation and other pollutants.

11. Through my years of research on brook trout streams in the central Appalachians, I developed an extensive understanding of the habitat requirements for the brook trout and the related aquatic community. In general, naturally reproducing brook trout populations only persist in small mountain streams that drain the most pristine undisturbed forested watersheds. Once aquatic trout habitat is degraded by permanent changes in watershed forest cover and runoff properties, prospects for recovery are minimal. The same is true for the endangered candy darter.

12. I have dedicated my professional career to studying and protecting these aquatic systems. I assisted in the development of protocols for government agency water sampling and published reports setting out protocols for designing and implementing water quality monitoring programs in National Forests throughout the United States and various National Parks in the Mid-Atlantic states.



13. In the course of my career studying the biogeochemistry of mountain streams in the central Appalachian highlands, I've had the opportunity to visit a very high percentage of native brook trout streams, and I've been to most of the streams that continue to provide remnant habitat for the candy darter, including those within the Upper Gauley River watershed—the actual stronghold for the candy darter, where the fish has the greatest chance of survival due to lack of genetic introgression by another darter. Yet this system is so delicate due to the acidity and because of the effects of extractive industries on public and private lands in the area, that I fear that the candy darter may be pushed toward extinction.

14. I have been, and continue to be, interested in protecting the candy darter, which was listed as endangered in December 2018. The candy darter is a species that is valuable in its own right, but it is also important because it is one species of many that are being lost due to poor land and forest management practices. It is a sensitive indicator species, like brook trout, that shows early impacts of larger changes in the environment such as climate change, earth disturbance, and watershed alteration.

15. The West Virginia Highlands Conservancy is a partner and ally of ABRA and has helped provide financial support for ABRA to develop a conservation mapping system that shows the overlap of watersheds that support the candy darter with Forest Service projects and other human disturbance activities. I have been working to help ABRA in this mapping effort by looking into Forest Service projects that would impact this species. One goal of mine, and these organizations, is for the Forest Service to come up with a watershed-scale approach that considers candy darter viability and restoration because it will benefit the entire ecosystem.

16. Through the effort to create the comprehensive mapping system for the candy darter, we learned about South Fork Coal Company's Rocky Run Mine, as well as the Forest

Service's decision to issue a commercial road use permit ("RUP") to South Fork Coal Company for hauling oversized coal loads from Rocky Run Mine.

17. As part of this effort, I've been doing research to understand the chemistry of streams and aquatic habitat in the Cranberry and Cherry River watersheds.

18. More recently I've been working with the West Virginia Highlands Conservancy and ABRA on the Red Spruce Technical Advisory Board, which was convened by the National Forest Service and The Nature Conservancy to bring experts together to talk about practices and planning for red spruce restoration in central and southern Appalachia. We made recommendations and raised concern about the destruction of red spruce forests in the area of the Monongahela National Forest and, specifically, the Rocky Run Mine site. The West Virginia Highlands may be defined by the pre-logging distribution of red spruce on the landscape. This is important because the red spruce, which dominated the high-elevation central Appalachian forests prior to industrial logging, is present now as just a remnant. The red spruce is ecologically important because it provides habitat to species and biological communities that depend upon it, and because of the high value of red spruce forest for soil building and retention of carbon and water.

19. In 2021, I studied impacts to the candy darter. I focused on impacts of Forest Service management projects in the Upper Gauley River watershed and their effect on aquatic habitat, including that of the candy darter. As part of that process, I uncovered the use of Forest Service Road 249, and worked to determine whether its use might adversely impact the candy darter. I learned that the road was being used intensively as a coal haulroad and draining directly into candy darter habitat. I also became aware of connected actions based on knowledge of the

use of this road, including use of the road to facilitate surface coal mining at the Rocky Run Mine, which drains directly into the South Fork Cherry River.

20. I learned that one of the candy darter streams draining the road was being heavily impacted by sedimentation, so that raised my and the West Virginia Highlands Conservancy's alarms about what was happening with the roads authorized for use by the Forest Service. We could not identify anything substantive that the Forest Service was doing in response to the candy darter's listing in 2018 or designation of critical habitat in 2021. Use of the road in the Monongahela National Forest for coal hauling within critical habitat for the endangered candy darter caused us to examine more closely what was going on.

21. On behalf of the West Virginia Highlands Conservancy, in early 2022 I began making informal requests to the Forest Service for any records related to the use of Forest Service Road 249 as a coal haulroad.

22. As a result of consistent failures by Forest Service employees to provide me with public information about the road's use, I prepared a FOIA request submitted on behalf of the West Virginia Highlands Conservancy. At the time I was a member of the Public Lands Committee of the West Virginia Highlands Conservancy. The organization submitted its FOIA request on May 9, 2022. The Forest Service provided an initial partial response and responsive records on July 25, 2022, and a second partial response and responsive records on August 5, 2022.

23. I received and reviewed the records that the Forest Service sent to the West Virginia Highlands Conservancy in response to the FOIA request to gain information about the Forest Service's approval of the use of Forest Service roads for coal hauling and related

activities. In particular, I was concerned upon my review of the following listed FOIA records, attached hereto as **Exhibits 1–9**:

- Ex. 1:** 21 0606 Application to use closed roadsFS\_7700\_40 v07-2013.pdf
- Ex. 2:** 21-6-25 RE\_ RUP required documents for estimated road use (2).pdf
- Ex. 3:** 21-6-24 RE\_ RUP required documents for estimated road use (4).pdf
- Ex. 4:** 21-8-20 RE\_ South Fork Coal RUP.pdf
- Ex. 5:** 3-16-2022 Inspection South Fork Coal RUP.pdf
- Ex. 6:** 22-3-17 RE\_ road use permits FR249 and FR223.pdf
- Ex. 7:** FS249 Sugartree Road Inspection and Pictures Apr-25-2022.pdf
- Ex. 8:** 22-5-1 External Email\_Re\_ \_EXTERNAL\_ RE\_ \_EXTERNAL\_ FR 249 Road Use Permit.pdf
- Ex. 9:** SOUTH FORK COAL ROAD USE PERMIT INSPECTION - 5-2-2022.pdf

24. My impression of the records the Forest Service sent in response to our FOIA request led me to believe that there was no evidence that any National Environmental Policy Act (“NEPA”) review was involved and that the Forest Service had failed to undergo consultation with the U.S. Fish and Wildlife Service (“FWS”) to determine the level of harm to the candy darter. I was stunned and dismayed that something so important would be treated so dismissively.

25. My impression from review of the records is that some employees and administrators of the Forest Service were trying to cut corners in this instance, and in general, disregarding the Endangered Species Act (“ESA”) and its implementing regulations, as well as NEPA, and dismissing the need to engage in meaningful environmental review as is required. Clearly, there was no kind of rigorous or meaningful environmental review process, particularly given that there was such a short timeframe (approximately three months) between the permit application and the Forest Service’s issuance of the permit. There was no evidence of any ESA consultation or NEPA review, something that was substantiated by a subsequent FOIA request sent on behalf of the West Virginia Highlands Conservancy and our partners in this action, Appalachian Mountain Advocates.

26. On behalf of the West Virginia Highlands Conservancy, on April 11, 2022, I emailed FWS for information about the coal haulroad in the watershed that includes candy darter critical habitat. *See* attached **Exhibit 10** (Coal haul road in candy darter habitat 4-19-22.pdf). In my email inquiry I specifically asked FWS: “Has there been any consultation that addresses this road or any Forest Service permitting or authorization of this road?” *Id.* I was informed by FWS that “[t]he Forest Service ... has been unresponsive to inquiries.” *Id.* A FWS employee responded on April 19, 2022, to inform me that the agency “did a search for recent projects and could not locate any coordination that has occurred with [the West Virginia Field] office and the Forest Service on the Candy Darter for this location at the [Monongahela National Forest].” *Id.*

27. On April 13, 2022, I emailed the Acting District Ranger for the Gauley District of the Forest Service to ask: “What type of Forest Service approval or permit was required for use of the road by a private company, when the approval or permit was granted, for what period it is in effect, and are there any conditions associated with the permit or approval?” *See* attached **Exhibit 11** (FW\_ Coal haul in candy darter critical habitat - Forest Service road question 4-19-22.pdf). In this email, I also asked “has consultation with [FWS] concerning potential impacts of this road on candy darter critical habitat taken place?” *Id.* The Ecosystem Staff Officer of the Forest Service responded on April 19, 2022, to inform me that “the forest service did not conduct ESA Section 7 consultation with the FWS because the only action that was authorized by [the Forest Service] was the use of an open [Forest Service] road,” that “[c]onnected actions to projects authorized, funded, or carried out by the Federal government can get convoluted and open to interpretation,” and that “because of issues with the road, [the Forest Service] has taken corrective action and had the company cease hauling on the road until the issues were addressed.” *Id.*

28. I understand the need for effective implementation of our national environmental laws, including NEPA and the ESA, if we are to preserve and restore habitat for sensitive biological communities in Cherry River watershed and Monongahela National Forest, as well as the larger Central Appalachian Highlands region. I have worked for transparency and meaningful public engagement in review and oversight processes that are central to these key environmental laws.

29. I am particularly concerned about the impacts actions that the Forest Service's RUP authorizes will have on streams that have been designated as critical habitat for the candy darter and on streams that support native brook trout. Both the native brook trout and the candy darter are present in the Cherry River watershed and affected by the Forest Service's issuance of the RUP.

30. Based on my review of the RUP and related regulatory documents, I have concluded that harmful impacts to the Cherry River watershed's mountain streams will be extremely difficult or impossible to avoid. Among these impacts are sedimentation and alteration of runoff characteristics that will result from the oversized coal hauling and related road construction and use. Silt or sediment deposits are key factors affecting candy darter, brook trout, and other mountain headwater species, because these species require clean gravel for successful reproduction. The extant candy darter and brook trout populations are only a remnant of the original distribution of these species. For this reason, the remaining populations are valuable and vulnerable.

31. I am a fisherman, a natural history enthusiast, and a scientist, and I am particularly interested in the relatively pristine mountain streams that support candy darter, brook trout, and other sensitive species. I'm also an avid birdwatcher.

32. My family takes frequent trips to visit and enjoy the natural world, and I've been almost everywhere that the candy darter currently exists because I've studied wild trout streams in West Virginia and Virginia many times over the years. Among the streams and areas that I have enjoyed and shared with family and friends over the last 35 years are the North Fork Cherry River, South Fork Cherry, and Laurel Creek.

33. Because I am fortunate to live in the area, I drive into the Upper Gauley Watershed within the Monongahela National Forest three or four times each year.

34. We frequently take scenic outings with family to show them this important area. While on these outings, I talk with my family about the candy darter and other important environmental values in the area.

35. We typically visit the area and the associated red spruce forests, candy darter streams, and watershed during every season of the year, and we frequently go to Cranberry Glades, which requires travelling along North Fork Cherry River on Route 39. I plan to continue to go back to the area in all seasons next year, as I have consistently in the past, for hiking, picnicking, wildlife observation, viewing and identifying plants and vegetation in the Glades, and enjoying the surrounding red spruce ecosystem with my family.

36. One of the most recent times I was there in the summer of 2024, we took our grandchildren and drove the Highlands Scenic Highway, which runs along the top of the Upper Gauley Watershed, and drove on Route 39 along the North Fork of Cherry River to visit the Cranberry Glades. We also visited Falls of Hills Creek in an adjacent watershed.

37. On another recent visit to the area in fall 2023, we also drove over to the South Fork Cherry River to look at the watershed, and we drove on FS223 and FS249 and followed backroads through South Fork Cherry River country.

38. I have visited the Monongahela National Forest many times each year for research, recreation, and appreciation of the natural world, and I will continue to do so. I especially appreciate the Cherry River watershed area and the remote natural landscape in and adjacent to the areas affected by the RUP. I am planning to go back to the North Fork Cherry River, and hopefully also the South Fork Cherry River, in summer 2025 to do some brook trout fishing, as these streams provide ideal habitat conditions for brook trout.

39. I go fishing when I can and usually go lately about 2 to 3 times per year in small trout streams, although I used to go more often than that. I last fished in the Chery River watershed in 2013 and have consistently hiked along many streams in the Cherry River and Cranberry River watersheds. All these streams in the area are important habitat for the candy darter and other sensitive species, such as the Eastern hellbender.

40. Despite numerous attempts to find candy darters during visits to the streams in the Cherry River watershed and West Virginia Highlands over the years, I've never seen a candy darter in the wild.

41. It is important to me that unique and endangered species, such as the candy darter, continue to survive in this area.

42. I am distraught knowing that this ecologically sensitive area, important freshwater habitat, and surrounding red spruce forest will be greatly diminished and will no longer provide the same value for study, recreation, and exposure to the natural world if the activities authorized under the RUP and the interconnected mines made possible by the RUP are allowed to continue without proper ESA and NEPA review. Oversized coal hauling, road work, hydrologic alteration, and unavoidable stream sedimentation will threaten the continued survival of the endangered candy darter and the native brook trout, which serve as key indicators of ecological integrity.



43. The candy darter and other fish and aquatic life are on life support in this area already. They rely on artificial limestone application to the streams in the Cherry River watershed by the West Virginia Department of Environmental Protection, due to the destruction and acidification of the Upper Gauley River watershed due to acidic atmospheric deposition and past earth disturbing human activities, such as road building, coal mining, and past timber operations.

44. I fear that the added harms caused by the Forest Service's issuance of the RUP and the activities it authorizes and makes possible, including Rocky Run Mine, will push these stream systems into further destruction and, in turn, drive sensitive aquatic species closer to the edge of survival.

45. The Cherry River watershed's stream system is an important part of the entire forest ecosystem, which has only recently begun to reestablish its ecological integrity through minimally invasive human use. The natural conditions of these streams are much different now than prior to being intensively targeted by extractive industries. Recovery of the forested watershed ecosystem requires establishing soil and water retention capacity, maintaining shade over streams, and the prevention of further sedimentation. The Forest Service's authorization of the activities under the RUP and related surface coal mining in the area effectively sets that recovery back considerably. It will be a loss to me personally and to following generations if we allow insufficiently considered actions by the Forest Service to reset the recovery timeline and diminish the ecological integrity of this remarkable area.

46. It is very important to me that we preserve and restore as much of the natural environment as we can, and the presence of species like the candy darter and brook trout are

indicators of the ecological health of these systems. These are part of the attributes of a natural system, if we start taking them away, the ecological integrity is lost.

47. Beyond our obligation to other people, we have an obligation to take care of the environment that we were planted in. There is a meaningful line from the poet Wendell Berry, “There are no unsacred places; there are only sacred places and desecrated places.” It emphasizes the idea that through human actions, places that are sacred become “desecrated.” To me, clear streams are sacred places, and humans are desecrating them through our actions.

48. If this Court were to rule in favor of the conservation group Plaintiffs, it would require the Forest Service to consult with the U.S. Fish and Wildlife Service and conduct an environmental review of the effects of its action, according to what science and the law require. This could lead to the vacatur or denial of the permit, or increased protections for the native species, including the candy darter, that call this place home, which would alleviate my injuries—at least in part.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of November, 2024, in Highland County, Virginia.

A handwritten signature in black ink, reading "James R. Webb". The signature is fluid and cursive, with the first name "James" and last name "Webb" clearly legible.

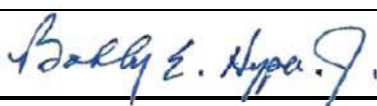
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James R. Webb

**Exhibit 1**  
**to Standing Declaration of James R. Webb**

**APPLICATION FOR PERMIT  
FOR USE OF ROADS, TRAILS, OR AREAS RESTRICTED BY REGULATION OR ORDER**

Authority: 16 U.S.C. 532-538

For Official Use Only					DATE OF APPLICATION
REGION 09	STATE West Virginia	COUNTY Pocahontas	FOREST Monongahela	RANGER DISTRICT Potomac	June 15, 2021
1. APPLICANT (name, address, and e-mail address) <u>South Fork Coal Company, LLC</u> <u>1295 Ashford Hill Road</u> <u>Ashford, WV 25009</u>					TELEPHONE NUMBER (304) 550 - 1517
2. DESCRIPTION OF RESTRICTED ROADS, TRAILS, or AREAS (show roads, trails, and areas on a map at a minimum scale of 1/2" equals one mile) FS Road 248 from CR 29/4 beginning to its full 1.1 mile length, over weight off road trucks hauling coal FS Road 223 (Bear Run) from SR 55 to CR 39/4 commercial deliveries of operating supplies to the mine  DATES OF PROPOSED USE September 2021 through September 2031  NAME OF PERSONS AUTHORIZED TO ACT AS THE APPLICANT'S AGENT FOR PURPOSES OF THIS PERMIT Bobby E. Hypes, Jr,					
3. PURPOSE OF USE  <input checked="" type="checkbox"/> COMMERCIAL USE OF ROADS RESTRICTED BY ORDER (attach Form FS-7700-40a)  <input checked="" type="checkbox"/> MOVEMENT OF OVERSIZE OR OVERWEIGHT VEHICLES (attach Form FS-7700-40b or a state department of transportation form used to request a permit for movement of oversize or overweight vehicles on state highways)  <input checked="" type="checkbox"/> MAINTENANCE OF A ROAD OR PLOWING SNOW ON A ROAD  <input type="checkbox"/> MOTOR VEHICLE USE OF ROADS, TRAILS, OR AREAS NOT DESIGNATED ON A MOTOR VEHICLE USE MAP (in block 4, specify the motor vehicle classes and the number of motor vehicles requested for authorization)  <input type="checkbox"/> BEING ON A ROAD OR TRAIL OR ENTERING AN AREA CLOSED BY AN ORDER  <input type="checkbox"/> OTHER (explain in block 4)					
4. REMARKS (attach other sheets if necessary) We propose to maintain roads during our period of use / the permit, including grading, sitching, stone surface, and snow removal.					
<p><i>According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0016. The time required to complete this information collection is estimated to average 5 minutes per response, including the time for reviewing road maps, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.</i></p> <p><i>The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).</i></p> <p><i>To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.</i></p> <p><i>The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.</i></p>					
SIGNATURE OF APPLICANT 					DATE 6/15/2021

**Exhibit 2**  
**to Standing Declaration of James R. Webb**

**Stevens, Karen -FS**

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**From:** Arbogast, Chad -FS  
**Sent:** Friday, June 25, 2021 8:39 AM  
**To:** Wright, Darrell - FS  
**Subject:** RE: RUP required documents for estimated road use

Okay. Thanks Darrell.

*Chad H. Arbogast*

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**From:** Wright, Darrell - FS <darrell.wright@usda.gov>  
**Sent:** Thursday, June 24, 2021 4:40 PM  
**To:** Arbogast, Chad -FS <chad.h.arbogast@usda.gov>; Whetsell, Carol -FS <carol.whetsell@usda.gov>; Raione, Richard - FS <richard.raione@usda.gov>  
**Subject:** RE: RUP required documents for estimated road use

Chad,  
I don't feel comfortable taking on this Road Use permit since it doesn't involve anything to do with timber or the hauling of logs or pulpwood. I will be glad to help you in anyway I can if you need something from me.  
Thanks  
Darrell



**Darrell Wright**  
**Timber Management Assistant**  
**Forest Service**  
**Monongahela National Forest**  
**Marlinton Ranger District**

p: 304-799-4334 Ext. 7995525

f: 304-799-6820

[darrell.wright@usda.gov](mailto:darrell.wright@usda.gov)

1627 Cemetery RD  
Marlinton, WV 24954

[www.fs.fed.us](http://www.fs.fed.us)



**Caring for the land and serving people**

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**From:** Arbogast, Chad -FS <[chad.h.arbogast@usda.gov](mailto:chad.h.arbogast@usda.gov)>  
**Sent:** Thursday, June 24, 2021 2:59 PM  
**To:** Whetsell, Carol -FS <[carol.whetsell@usda.gov](mailto:carol.whetsell@usda.gov)>; Raione, Richard -FS <[richard.raione@usda.gov](mailto:richard.raione@usda.gov)>  
**Cc:** Wright, Darrell - FS <[darrell.wright@usda.gov](mailto:darrell.wright@usda.gov)>  
**Subject:** RE: RUP required documents for estimated road use

**TO ALL,**

Mr. Hypes called me today and left a message concerning his RUP for the roads at Bear Run. I will give him a call back and let him know we are reviewing this. Here are a few questions for each of you.

**Richard,**

Where do you stand on allowing the closure?

I have the information to issue a RUP for these roads. The one for FS 223 is simple as it is just a typical RUP with the exception of Weyerhaeuser's involvement. I will need a copy of their RUP to see how it is written and how we need to handle the shared maintenance. Is there a copy on file at the office? Can you have someone send me a copy?

FS 249 is a little more complicated because it will be shut down and they will be doing extensive rebuild and heavy maintenance for the expected loads. I believe we should make FS 249 their responsibility to maintain (rather than collecting funds, require maintenance). Also we will need to work out the proper wording for what we want when they are rebuilding (new pipes, bigger pipes, road width when they have completed operations, etc.). Finally, will need to know a bond amount to associate with this project (typically set by the Ranger). I would recommend something around \$200,000 - \$250,000 due to the type of heavy use and potential for spill/contamination.

**Carol,**

Are there things we need to have access on FS 249 for, such as access for tower maintenance or to perform Forest activities? What Kind of wording do you recommend? When is an answer/letter/recommendation going to be forthcoming?

**Darrell,**

Are you taking a stab at this RUP, with my help, or am I taking the lead?

Thanks,

*Chad H. Arbogast*

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**From:** Bob Hypes <[bhypes@whiteforestresources.com](mailto:bhypes@whiteforestresources.com)>

**Sent:** Friday, June 11, 2021 3:08 PM

**To:** Arbogast, Chad -FS <[chad.h.arbogast@usda.gov](mailto:chad.h.arbogast@usda.gov)>

**Cc:** Raione, Richard -FS <[richard.raione@usda.gov](mailto:richard.raione@usda.gov)>; Wright, Darrell - FS <[darrell.wright@usda.gov](mailto:darrell.wright@usda.gov)>; Whetsell, Carol -FS <[carol.whetsell@usda.gov](mailto:carol.whetsell@usda.gov)>; Jeff Wilson <[jwilson@whiteforestresources.com](mailto:jwilson@whiteforestresources.com)>

**Subject:** RE: RUP required documents for estimated road use

Chad,

Attached are the various USDA Forest Service Permit Applications regarding the commercial use of FS Road 223 and coal transportation across FS Road 249. I have also attached our draft agreement with the WVDONH regarding CR 39/4 (4.4 miles) and CR 29/4 (.9 miles), the plan is for WVDONH to do a temporary closure for the 10 year projected duration of our Rocky Run Mining Project. There will be no need for change of ownership or reciprocal lease agreements, we will be responsible for maintaining drainage, durable stone surface, grading, snow removal, and road closure signage. I apologize for the delay but I wanted to include for transparency and formality, the draft agreement from WVDONH, which came today. Please do not hesitate to reach out if you have any question, require additional information, or schedule a site visit to observe our construction practices as we develop our permitted Haul Road to FS Road 249. We truly appreciate all of your time and effort in consideration of these permit requests. I can be reached at any time on (304) 550-1517.

Thanks,

**Bobby E. Hypes, Jr.**

**Mgr. – Transportation, Land, Human Resources,  
Environmental and Government Affairs**

**White Forest Resources, Inc.**

South Fork Coal Co., LLC  
Raven Crest Contracting, LLC  
1295 Ashford Hill Road  
Ashford, WV 25009

Direct (304) 833-9265  
Fax (304) 433-8367  
Cell (304) 550-1517

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**From:** Arbogast, Chad -FS <[chad.h.arbogast@usda.gov](mailto:chad.h.arbogast@usda.gov)>  
**Sent:** Tuesday, May 4, 2021 7:50 AM  
**To:** Bob Hypes <[bhypes@whiteforestresources.com](mailto:bhypes@whiteforestresources.com)>  
**Cc:** Raione, Richard -FS <[richard.raione@usda.gov](mailto:richard.raione@usda.gov)>; Wright, Darrell - FS <[darrell.wright@usda.gov](mailto:darrell.wright@usda.gov)>; Whetsell, Carol -FS <[carol.whetsell@usda.gov](mailto:carol.whetsell@usda.gov)>  
**Subject:** RE: RUP required documents for estimated road use

Mr. Hypes,

I was just checking in. I still have not received the requested information for the additional use that will be associated with you Road Use Permit. Just looking for an update, and the information if it is available.

Thanks,

*Chad H. Arbogast*

---

**From:** Bob Hypes <[bhypes@whiteforestresources.com](mailto:bhypes@whiteforestresources.com)>  
**Sent:** Tuesday, April 13, 2021 6:58 PM  
**To:** Arbogast, Chad -FS <[chad.h.arbogast@usda.gov](mailto:chad.h.arbogast@usda.gov)>  
**Cc:** Wright, Darrell - FS <[darrell.wright@usda.gov](mailto:darrell.wright@usda.gov)>; Raione, Richard -FS <[richard.raione@usda.gov](mailto:richard.raione@usda.gov)>; Bard, Jane -FS <[jane.bard@usda.gov](mailto:jane.bard@usda.gov)>  
**Subject:** Re: RUP required documents for estimated road use

Thank you, we will pull the required information together and provide as soon as possible, likely within a week. I appreciate your time effort.

Best regards,  
Bob

Sent from my iPhone

On Apr 13, 2021, at 4:06 PM, Arbogast, Chad -FS <[chad.h.arbogast@usda.gov](mailto:chad.h.arbogast@usda.gov)> wrote:

Mr. Hypes,

As per our conversation, we will need information submitted before we can form a Road Use Permit in association with Bear Run and Sugartree roads. I can use the 30,000 ton per month estimate for coal hauled on Sugar tree, but will need estimated weights and frequency for deliveries (fuel, parts, etc.) that will be associated with the Bear Run road.

If you have any questions please contact me,



**Exhibit 3**  
**to Standing Declaration of James R. Webb**

**Stevens, Karen -FS**

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**From:** Arbogast, Chad -FS  
**Sent:** Thursday, June 24, 2021 3:18 PM  
**To:** Whetsell, Carol -FS; Raione, Richard -FS  
**Cc:** Wright, Darrell - FS  
**Subject:** RE: RUP required documents for estimated road use

**FOLLOW UP**

I just got off the phone with Mr. Hypes. He says the road closure will not interfere with our access to the area as they are more than happy to accommodate any needs we may have (he is willing to put that in writing). He stated that Weyerhaeuser and the Forest Service are not "public" as it pertains to the closure due to the landownership.

They cannot do the road closure with the DOH until they have our written permission as per section V. subsection G. of the DOH road closure permit.

Finally, they plan to be hauling in September. So, time is important on this one.

*Chad H. Arbogast*

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**From:** Arbogast, Chad -FS  
**Sent:** Thursday, June 24, 2021 2:59 PM  
**To:** Whetsell, Carol -FS <carol.whetsell@usda.gov>; Raione, Richard -FS <richard.raione@usda.gov>  
**Cc:** Wright, Darrell - FS <darrell.wright@usda.gov>  
**Subject:** RE: RUP required documents for estimated road use

**TO ALL,**

Mr. Hypes called me today and left a message concerning his RUP for the roads at Bear Run. I will give him a call back and let him know we are reviewing this. Here are a few questions for each of you.

**Richard,**

Where do you stand on allowing the closure?

I have the information to issue a RUP for these roads. The one for FS 223 is simple as it is just a typical RUP with the exception of Weyerhaeuser's involvement. I will need a copy of their RUP to see how it is written and how we need to handle the shared maintenance. Is there a copy on file at the office? Can you have someone send me a copy?

FS 249 is a little more complicated because it will be shut down and they will be doing extensive rebuild and heavy maintenance for the expected loads. I believe we should make FS 249 their responsibility to maintain (rather than collecting funds, require maintenance). Also we will need to work out the proper wording for what we want when they are rebuilding (new pipes, bigger pipes, road width when they have completed operations, etc.). Finally, will need to know a bond amount to associate with this project (typically set by the Ranger). I would recommend something around \$200,000 - \$250,000 due to the type of heavy use and potential for spill/contamination.

**Carol,**

Are there things we need to have access on FS 249 for, such as access for tower maintenance or to perform Forest activities? What Kind of wording do you recommend? When is an answer/letter/recommendation going to be forthcoming?

**Darrell,**

Are you taking a stab at this RUP, with my help, or am I taking the lead?

Thanks,

*Chad H. Arbogast*

---

**From:** Bob Hypes <[bhypes@whiteforestresources.com](mailto:bhypes@whiteforestresources.com)>

**Sent:** Friday, June 11, 2021 3:08 PM

**To:** Arbogast, Chad -FS <[chad.h.arbogast@usda.gov](mailto:chad.h.arbogast@usda.gov)>

**Cc:** Raione, Richard -FS <[richard.raione@usda.gov](mailto:richard.raione@usda.gov)>; Wright, Darrell - FS <[darrell.wright@usda.gov](mailto:darrell.wright@usda.gov)>; Whetsell, Carol -FS <[carol.whetsell@usda.gov](mailto:carol.whetsell@usda.gov)>; Jeff Wilson <[jwilson@whiteforestresources.com](mailto:jwilson@whiteforestresources.com)>

**Subject:** RE: RUP required documents for estimated road use

Chad,

Attached are the various USDA Forest Service Permit Applications regarding the commercial use of FS Road 223 and coal transportation across FS Road 249. I have also attached our draft agreement with the WVDOH regarding CR 39/4 (4.4 miles) and CR 29/4 (.9 miles), the plan is for WVDOH to do a temporary closure for the 10 year projected duration of our Rocky Run Mining Project. There will be no need for change of ownership or reciprocal lease agreements, we will be responsible for maintaining drainage, durable stone surface, grading, snow removal, and road closure signage. I apologize for the delay but I wanted to include for transparency and formality, the draft agreement from WVDOH, which came today. Please do not hesitate to reach out if you have any question, require additional information, or schedule a site visit to observe our construction practices as we develop our permitted Haul Road to FS Road 249. We truly appreciate all of your time and effort in consideration of these permit requests. I can be reached at any time on (304) 550-1517.

Thanks,

**Bobby E. Hypes, Jr.**

**Mgr. – Transportation, Land, Human Resources,  
Environmental and Government Affairs**

**White Forest Resources, Inc.  
South Fork Coal Co., LLC  
Raven Crest Contracting, LLC  
1295 Ashford Hill Road  
Ashford, WV 25009**

**Direct (304) 833-9265  
Fax (304) 433-8367  
Cell (304) 550-1517**

---

**From:** Arbogast, Chad -FS <[chad.h.arbogast@usda.gov](mailto:chad.h.arbogast@usda.gov)>

**Sent:** Tuesday, May 4, 2021 7:50 AM

**To:** Bob Hypes <[bhypes@whiteforestresources.com](mailto:bhypes@whiteforestresources.com)>

**Cc:** Raione, Richard -FS <[richard.raione@usda.gov](mailto:richard.raione@usda.gov)>; Wright, Darrell - FS <[darrell.wright@usda.gov](mailto:darrell.wright@usda.gov)>; Whetsell, Carol -FS <[carol.whetsell@usda.gov](mailto:carol.whetsell@usda.gov)>

**Subject:** RE: RUP required documents for estimated road use

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*Chad H. Arbogast*

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**From:** Bob Hypes <[bhypes@whiteforestresources.com](mailto:bhypes@whiteforestresources.com)>

**Sent:** Tuesday, April 13, 2021 6:58 PM

**To:** Arbogast, Chad -FS <[chad.h.arbogast@usda.gov](mailto:chad.h.arbogast@usda.gov)>

**Cc:** Wright, Darrell - FS <[darrell.wright@usda.gov](mailto:darrell.wright@usda.gov)>; Raione, Richard -FS <[richard.raione@usda.gov](mailto:richard.raione@usda.gov)>; Bard, Jane -FS <[jane.bard@usda.gov](mailto:jane.bard@usda.gov)>

**Subject:** Re: RUP required documents for estimated road use

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Best regards,

Bob

Sent from my iPhone

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If you have any questions please contact me,

Chad

<image001.png> Chad H. Arbogast  
FOREST MINERALS TECH/ GREENBRIER DIST. RANGE TECH/ COR/ ER/ RANGE MANAGER  
Forest Service  
Monongahela National Forest  
p: 304-456-3335 x121  
f: 304-456-3441  
[chad.h.arbogast@usda.gov](mailto:chad.h.arbogast@usda.gov)  
P.O. box 67 Route 250/92  
Bartow, WV 24920  
[www.fs.fed.us](http://www.fs.fed.us)  
<image002.png>  
<image003.png>  
<image004.png>  
Caring for the land and serving people

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<Application to use closed roadsFS\_7700\_40 v07-2013.docx>

<Commercial Use AttachmentFS\_7700\_40a v07-2013.docx>

<Oversized Load AttachmentFS\_7700\_40b v07-2013.docx>

Chad

<image001.png> Chad H. Arbogast  
**FOREST MINERALS TECH/ GREENBRIER DIST. RANGE TECH/ COR/ ER/ RANGE MANAGER**  
**Forest Service**  
**Monongahela National Forest**  
p: 304-456-3335 x121  
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[chad.h.arbogast@usda.gov](mailto:chad.h.arbogast@usda.gov)  
P.O. box 67 Route 250/92  
Bartow, WV 24920  
[www.fs.fed.us](http://www.fs.fed.us)  
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<image004.png>  
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<Application to use closed roadsFS\_7700\_40 v07-2013.docx>

<Commercial Use AttachmentFS\_7700\_40a v07-2013.docx>

<Oversized Load AttachmentFS\_7700\_40b v07-2013.docx>

**Exhibit 4**  
**to Standing Declaration of James R. Webb**

**Stevens, Karen -FS**

---

**From:** Arbogast, Chad -FS  
**Sent:** Friday, August 20, 2021 9:03 AM  
**To:** Raione, Richard -FS; Bard, Jane -FS; Wright, Darrell - FS; Whetsell, Carol -FS; Phillips, Robert - FS  
**Cc:** Dezelin, Sarah - FS  
**Subject:** RE: South Fork Coal RUP

Sorry, something has come up this morning and I will not be able to attend the meeting. If you have any questions, email them to me and I will address them this afternoon. As far as Carol's concerns about access for permittees, SUP holders, etc. the nonexclusive use statement in the RUP takes care of those issues (as far as the RUP is concerned). I would recommend doing the road closure for FR 249 (to general public) as soon as possible however. Also, I think a stated clarification for use of FS personnel and SUP holders should still be put in place with any closure associated with the state rte.

Again, sorry I am not available.

*Chad H. Arbogast*

---

**From:** Raione, Richard -FS <[richard.raione@usda.gov](mailto:richard.raione@usda.gov)>  
**Sent:** Thursday, August 19, 2021 10:37 AM  
**To:** Arbogast, Chad -FS <[chad.h.arbogast@usda.gov](mailto:chad.h.arbogast@usda.gov)>; Bard, Jane -FS <[jane.bard@usda.gov](mailto:jane.bard@usda.gov)>; Wright, Darrell - FS <[darrell.wright@usda.gov](mailto:darrell.wright@usda.gov)>; Whetsell, Carol -FS <[carol.whetsell@usda.gov](mailto:carol.whetsell@usda.gov)>; Phillips, Robert - FS <[robert.phillips1@usda.gov](mailto:robert.phillips1@usda.gov)>  
**Cc:** Dezelin, Sarah - FS <[Sarah.Dezelin@usda.gov](mailto:Sarah.Dezelin@usda.gov)>  
**Subject:** FW: South Fork Coal RUP

I am good to go with this but would like to schedule a quick final meeting to ensure everyone is on the same page.

How does 1100 tomorrow work, or anytime later tomorrow?

If not, how does anytime after 1230 look for next Monday?

Thanks Chad for all of your work on this, great job !

---

**From:** Arbogast, Chad -FS <[chad.h.arbogast@usda.gov](mailto:chad.h.arbogast@usda.gov)>  
**Sent:** Thursday, August 19, 2021 10:06 AM  
**To:** Bob Hypes <[bhypes@whiteforestresources.com](mailto:bhypes@whiteforestresources.com)>; Raione, Richard -FS <[richard.raione@usda.gov](mailto:richard.raione@usda.gov)>  
**Subject:** South Fork Coal RUP

Richard/Mr. Hypes,

Please find attached for your review, the documents constituting the RUP for the Southfork Coal company's use of FR 249 and FR 223. If you find any errors, have any questions, or have any requested changes, please let me know. In order to validate permit, will need both signatures as well as a copy of the required bond (to Gauley District Ranger Office).

Thanks,  
Chad



**Exhibit 5**  
**to Standing Declaration of James R. Webb**

I performed an on-site review of FR 223 and FR 249 yesterday 3/16/22. After driving through the area and speaking with several of South Fork Coal's personnel I have the following to report.

**FR 249 (CLOSED TO PUBLIC TRAVEL – MAIN COAL HAUL ROUTE – ALL MAINTENANCE RESPONSIBILITY OF THE RUP HOLDER)**

As per the RUP as to FR 249, the permittee is to maintain positive drainage by cleaning, installing, and replacing culverts as needed, maintain proper shape to roadway, and clean/maintain all ditches, remove ruts and irregularities in the surface as needed, and provide a stable travel way without damaging the road base by placing crushed aggregate or other durable surface as needed.

**The contractor is currently out of compliance on FR 249 but coal hauling operations have been suspended until such time as road repairs are complete.** The area has received substantial rainfall over the past two weeks. The rainfall coupled with typical "thaw" conditions has caused FR 249 to become muddy on the surface, show signs of heavy rutting in localized areas, and has led to sedimentation filling cleanout areas at the ends of culverts. The WVDEP has shut down all coal hauling operations until such time as the road has been repaired and sediment traps have been cleaned out. Yesterday there were 2 crews working on the roadway, utilizing excavators and off-road trucks to dig out and removed compromised sections of the roadway. A third crew was working to provide aggregate, from the mining operation area, to replace removed material. Removed material was being replaced, with shot rock from the mining operation, to stabilize the areas and promote proper drainage. Once road base is repaired and traps are cleaned, the operator intends to supply crushed aggregate to surface the worst areas of the roadway and prevent further sedimentation. Intentions are to bring a rock crusher to the site so that surface aggregates can be generated at the mine site in the future. This will help prevent any reoccurrence of the current condition and will bring the permittee back into compliance with the requirements of the RUP as it pertains to FR 249.

**FR 223 (OPEN TO GENERAL PUBLIC – MAIN ACCESS ROUTE TO MINE FOR SUPPLIES AND PERSONNEL – DEPOSIT MADE FOR MAINTENANCE TO BE PERFORMED BY U.S.F.S.) – NOTE THAT THIS AREA IS ALSO UNDER RUP FOR WEYERHAUSER**

As per the RUP as it relates to FR 223, the permittee is to perform maintenance which would not be necessary if the holder's use did not occur. The permittee is proportionately responsible with other users of the roads authorized by the permit for maintenance that is due to natural causes such as rain and brush growth. The initial calculation for the cost of "normal maintenance" work was \$4,539.08 for the year. Additionally, the contractor must restore any damage resulting from snow removal (including replacement of lost stone) in a timely manner.

**The contractor is currently in compliance with the RUP requirements for FR 223. However, RUP required maintenance of the roadway is needed.** FR 223 has several soft areas with minor rutting. Area has recently received some stone in what would have been the worst (muddiest) areas. Removal of snow on FR 223 for winter hauling activities (for both permittees) has cause a loss of surface aggregate. Heavy hauling during the winter and recent thaw has caused some rutting which is resulting in poor drainage in some areas, causing soft spots and some minor surface erosion. Also, the outlet end of a culvert at the intersection of FR 223 and US 39 has been crushed by heavy traffic failing to make the turn onto FR 223 properly.

It is my position that the damage listed above is a direct result of the permittees use during the winter and early spring seasons. As such I recommend that the permittees (proportionately to all permittees) be required to pull ditches, clean culvert heads, and grade the entire road surface to reestablish proper

road template and positive drainage. Emphasis should be placed on trying to recapture stone that was lost during snow removal activities (this work could be counted toward commensurate share cost of (\$4,539.08) required by the permit). Additionally, the permittees will also need to repair the damaged culvert at the intersection of FR 223 and U.S. 39 by opening the crushed end or replacing the culvert (as needed). Finally, the permittees (authorized to perform snow removal) should be required to provide 1 ½" crusher run aggregate, in the amount of a minimum of 750 tons (amount is approximately equal to 1" of aggregate over ½ the length of the roadway) to replace aggregate lost during snow removal activities. This aggregate should be placed once grading activities are complete.

**WORK REQUIRED ON FR 223 NOT COVERED UNDER EXISTING RUPs.**

Additional concerns not covered under the RUP were also discovered. There is a series of culverts which are dilapidated, undersized, plugged and/or damaged. These culverts have failed to function properly and have overflowed during the recent heavy rain activity causing road surface washing and soil failures of the fill slope. I believe the existing culverts will need replaced, shot rock will need to be placed along the fill slope to stabilize the soils, and the surface of the road will need to be treated with aggregate to help rebuild the template of the road in the area. (Materials – 35-40 ft of 30" culvert, 35-40 ft of 24" culvert (relocate culverts from their current position and add skew), 20 tons 12"-24" riprap, 100 tons of 1 ½" crusher run aggregate). There is an additional culvert above the failing area which will need reviewed for size and condition and may also need replaced. Additional road surfacing may need additional aggregate once permittee has completed work listed above. **This work should be completed by the U.S.F.S. as part of maintenance not covered under the existing RUPs.**

**I will work with Jeff to see if the C&M crew can perform the pipe and slope repairs. I will contact Jason Miller, Environmental specialist - Southfork Coal Company, to express need for grading and stone placement. If Jason isn't in direct contact with Weyerhaeuser, to coordinate this maintenance, I will work with Darrel to get contact information and work out the shared responsibility of the maintenance on FR223. It was my original understanding that Southfork Coal will be doing all maintenance on 223 as per an agreement they made with Weyerhaeuser, but I will confirm.**

*Chad H. Arbogast*



Chad H. Arbogast  
FOREST MINERALS TECH/ GREENBRIER DIST. RANGE TECH/ COR/ ER/ RANGE MANAGER

**Forest Service**  
**Monongahela National Forest**

p: 304-456-3335 x121

f: 304-456-3441

[chad.h.arbogast@usda.gov](mailto:chad.h.arbogast@usda.gov)

P.O. box 67 Route 250/92

Bartow, WV 24920

[www.fs.fed.us](http://www.fs.fed.us)



**Caring for the land and serving people**

**Exhibit 6**  
**to Standing Declaration of James R. Webb**

**Stevens, Karen -FS**

---

**From:** Arbogast, Chad -FS  
**Sent:** Thursday, March 17, 2022 10:14 AM  
**To:** Messerschmidt, Kody -FS; Phillips, Robert - FS; Shaffer, Benjamin - FS, ELKINS, WV  
**Cc:** Taddie, Andrew - FS, ELKINS, WV; Wright, Darrell - FS; Wood, Jeffrey -FS, Elkins, WV  
**Subject:** RE: road use permits FR249 and FR223

I performed an on-site review of FR 223 and FR 249 yesterday 3/16/22. After driving through the area and speaking with several of South Fork Coal's personnel I have the following to report.

**FR 249 (CLOSED TO PUBLIC TRAVEL – MAIN COAL HAUL ROUTE – ALL MAINTENANCE RESPONSIBILITY OF THE RUP HOLDER)**

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*Chad H. Arbogast*

---

**From:** Messerschmidt, Kody -FS <kody.messerschmidt@usda.gov>

**Sent:** Tuesday, March 15, 2022 10:17 AM

**To:** Arbogast, Chad -FS <chad.h.arbogast@usda.gov>; Phillips, Robert - FS <robert.phillips1@usda.gov>; Shaffer, Benjamin - FS, ELKINS, WV <Benjamin.Shaffer@usda.gov>

**Cc:** Taddie, Andrew - FS, ELKINS, WV <Andrew.Taddie@usda.gov>

**Subject:** RE: road use permits FR249 and FR223

Thanks everyone. I am not worried about the mining haul or any haul that isn't on our roads. I just want to make sure that our forest road with Weyerhaeuser is being properly maintained and that we have a fairly current documentation of this. So thanks for the site visit and write up when you get back.



**Kody D. Messerschmidt, Forester  
Acting District Ranger**

P: 304-846-2695

C: 540-315-6672

[kody.messerschmidt@usda.gov](mailto:kody.messerschmidt@usda.gov)

**Forest Service**

**Monongahela National Forest,  
Gauley, Marlinton-White Sulphur  
Ranger Districts**

932 North Fork Cherry Rd.  
Richwood WV 26261

[www.fs.fed.us](http://www.fs.fed.us)



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people

---

**From:** Arbogast, Chad -FS <[chad.h.arbogast@usda.gov](mailto:chad.h.arbogast@usda.gov)>  
**Sent:** Tuesday, March 15, 2022 9:50 AM  
**To:** Phillips, Robert - FS <[robert.phillips1@usda.gov](mailto:robert.phillips1@usda.gov)>; Shaffer, Benjamin - FS, ELKINS, WV <[Benjamin.Shaffer@usda.gov](mailto:Benjamin.Shaffer@usda.gov)>  
**Cc:** Taddie, Andrew - FS, ELKINS, WV <[Andrew.Taddie@usda.gov](mailto:Andrew.Taddie@usda.gov)>; Messerschmidt, Kody -FS <[kody.messerschmidt@usda.gov](mailto:kody.messerschmidt@usda.gov)>  
**Subject:** RE: road use permits FR249 and FR223

Bob,

Couple of things. First, the mining activities and associated hauling are regulated by the WVDEP Division of Mining and Reclamation. If issues are occurring on state/county routes and associated private lands, that should fall under their purview.

Additionally, some damage from hauling, that would be hard for normal traffic to negotiate, is anticipated on both CR **29/4 and FR 249** during hauling activities. That is why those roads were **closed to the public for the duration of hauling** and mining activities. Which begs the question, "why was a member of the public driving on the closed sections of roads, associated with the hauling activities, in the first place?"

All that aside, I will make a trip down on Wednesday or Thursday to take a look. I will send a follow up email to you and Kody with my observations and recommendations.

*Chad H. Arbogast*

---

**From:** Phillips, Robert - FS <[robert.phillips1@usda.gov](mailto:robert.phillips1@usda.gov)>  
**Sent:** Tuesday, March 15, 2022 9:10 AM  
**To:** Shaffer, Benjamin - FS, ELKINS, WV <[Benjamin.Shaffer@usda.gov](mailto:Benjamin.Shaffer@usda.gov)>  
**Cc:** Arbogast, Chad -FS <[chad.h.arbogast@usda.gov](mailto:chad.h.arbogast@usda.gov)>; Taddie, Andrew - FS, ELKINS, WV <[Andrew.Taddie@usda.gov](mailto:Andrew.Taddie@usda.gov)>  
**Subject:** RE: road use permits FR249 and FR223

Adding Andrew on this so I don't have to give the elevator speech over again.

This is associated with a Road Use Permit (RUP). Essentially RUP's are given to entities for road usage on FS roads with a commercial purpose (i.e. hauling coal, timber, Oil/Gas/Coal Operations, etc.).

Currently, Chad is the RUP administrator for the Forest, essentially creating the permits and tracking them (correct me where I'm mistaken, Chad).

Chad also has some more specific insight into this RUP- feel free to coordinate with Ben on it as necessary. I understand Darrel Wright is involved as well.

Bob

---

**From:** Messerschmidt, Kody -FS <[kody.messerschmidt@usda.gov](mailto:kody.messerschmidt@usda.gov)>  
**Sent:** Tuesday, March 15, 2022 8:49 AM  
**To:** Shaffer, Benjamin - FS, ELKINS, WV <[Benjamin.Shaffer@usda.gov](mailto:Benjamin.Shaffer@usda.gov)>



Cc: Phillips, Robert - FS <[robert.phillips1@usda.gov](mailto:robert.phillips1@usda.gov)>; Arbogast, Chad -FS <[chad.h.arbogast@usda.gov](mailto:chad.h.arbogast@usda.gov)>; Hattersley, Jason -FS <[jason.hattersley@usda.gov](mailto:jason.hattersley@usda.gov)>

Subject: FW: road use permits FR249 and FR223

Ben,

Check out the original email from Jane. I was hoping you could drive out and take a look at this road and the permitted use. We had a complaint from the public and I just want to make sure we have some documentation as far and checking the road use during this thaw. I think most of the issues he called about were actually on county roads but just making sure.

Thank you!



**Kody D. Messerschmidt, Forester  
Acting District Ranger**

P: 304-846-2695

C: 540-315-6672

[kody.messerschmidt@usda.gov](mailto:kody.messerschmidt@usda.gov)

**Forest Service**

**Monongahela National Forest,  
Gauley, Marlinton-White Sulphur  
Ranger Districts**

932 North Fork Cherry Rd.

Richwood WV 26261

[www.fs.fed.us](http://www.fs.fed.us)



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people**

---

**From:** Wright, Darrell - FS <[darrell.wright@usda.gov](mailto:darrell.wright@usda.gov)>

**Sent:** Monday, March 14, 2022 4:44 PM

**To:** Messerschmidt, Kody -FS <[kody.messerschmidt@usda.gov](mailto:kody.messerschmidt@usda.gov)>

**Subject:** RE: road use permits FR249 and FR223

Yes,

Weyerhaeuser has a road use permit for Bear Run Road which is FR 223 and Little Level's also has a road use permit on that road as well.

Thanks

Darrell



**Darrell Wright  
Timber Management Assistant**

**Forest Service**

**Monongahela National Forest  
Marlinton Ranger District**

p: 304-799-4334 Ext. 7995525

f: 304-799-6820

[darrell.wright@usda.gov](mailto:darrell.wright@usda.gov)

1627 Cemetery RD

Marlinton, WV 24954

[www.fs.fed.us](http://www.fs.fed.us)



Caring for the land and serving people

---

**From:** Messerschmidt, Kody -FS <[kody.messerschmidt@usda.gov](mailto:kody.messerschmidt@usda.gov)>  
**Sent:** Monday, March 14, 2022 4:22 PM  
**To:** Wright, Darrell - FS <[darrell.wright@usda.gov](mailto:darrell.wright@usda.gov)>  
**Cc:** Bard, Jane -FS, Richwood, WV <[jane.bard@usda.gov](mailto:jane.bard@usda.gov)>  
**Subject:** RE: road use permits FR249 and FR223

Darrell,

Is there a road use permit on us for this road for Weyerhaeuser?



**Kody D. Messerschmidt, Forester**  
**Acting District Ranger**  
P: 304-846-2695  
C: 540-315-6672  
[kody.messerschmidt@usda.gov](mailto:kody.messerschmidt@usda.gov)

**Forest Service**  
**Monongahela National Forest,**  
**Gauley, Marlinton-White Sulphur**  
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932 North Fork Cherry Rd.  
Richwood WV 26261  
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people

---

**From:** Bard, Jane -FS, Richwood, WV <[jane.bard@usda.gov](mailto:jane.bard@usda.gov)>  
**Sent:** Monday, March 14, 2022 3:48 PM  
**To:** Wright, Darrell - FS <[darrell.wright@usda.gov](mailto:darrell.wright@usda.gov)>  
**Cc:** Messerschmidt, Kody -FS <[kody.messerschmidt@usda.gov](mailto:kody.messerschmidt@usda.gov)>  
**Subject:** road use permits FR249 and FR223

An individual called in this afternoon about road conditions on County road 29/4, related to the coal mine hauling traffic. He indicated that there was sediment entering stream channels near part of the haul route on private land, and he expressed concern about water quality and habitat on NF lands near the haul route, although he did understand that we don't have jurisdiction on the county roads or those on private lands.

Augustine and I were out that way last Thursday, and I observed that the Bear Run road was in good shape. There was some surface mud on FR 249 that day, but it might become worse this week with more warming weather.

**Exhibit 7**  
**to Standing Declaration of James R. Webb**

/USDA Forest Service

CONTRACT DAILY DIARY

FS-6300-20

(01/2000)

(List Name of) National Forest

(Reference FSH 6309.11)

CONTRACT NO							
PROJECT			249 SUGARTREE ROAD INSPECTION				
CONTRACTOR			N/A				
CONTRACTOR'S REPRESENTATIVE ON SITE			N/A				
GOVERNMENT OFFICIALS ON SITE			Leo Weese				
DATE	April 26, 2022	TIME ARRIVED	0723	CONTRACT TIME	N/A	WEATHER	dry
DAY OF WEEK	Tuesday	TIME DEPARTED	1330	DAYS USED	N/A	TEMP	65
% OF WORK COMPLETED	N/A	TIME USED (%)		COMPLETION DATE	N/A	GROUND CONDITION	dry
WORK ON SCHEDULE (YES / NO)		N/A	CONTRACTOR'S WORK (ACCEPTABLE / UNACCEPTABLE)			UNACCEPTABLE	
CHANGE ORDERS / AMMENDMENTS ISSUED				WORK ORDERS ISSUED ( Include SUPPENDED / RESUME)			
MATERIALS FURNISHED TO JOB SITE (G=GOVT; C=CONT; S=SUBCONT)				LIST EQUIPMENT ON SITE (G=GOVT; C=CONT; S=SUBCONT)			
				TYPE	CONTROL ITEM NO. & LOCATION OF USE		HOURS USED
LIST CONTRACT PAYMENTS, REPORTS, CORRESPONDENCE, ETC.				WORKERS ON SITE			
Item	Prep.	Submit	Classification			Prime	Sub
GOVERNMENT PROVIDED SERVICE ADEQUATELY AND TIMELY				Yes		No	
<b>NARRATIVE REPORT</b>							
<p>Notes:</p> <p>No erosion control other the sumps in ditches and drains  Road is very dusty and some spots clean 1 1/2 to 2 inch stone  Today was dry condition  65 degrees  Sunny  Gate lock post is missing at the beginning of FS249 and all signs missing off gate that is left.  23 to 27 feet wide average road width  Forest Service Gate missing at the end of FS249  Property line is not marked or visible  Road ditches has sediment in them from the runoff the road prism.  If we have a weather event, they will be a lot of sediment that will be getting in the drains.  Most of the road has 2-to-4-foot berms on fill slopes and some areas on side of road on cut side of the road.</p> <ol style="list-style-type: none"> <li>1. Needed added sediment control more sumps, check dams, and other.</li> <li>2. Add Stone</li> <li>3. Reshape road to drain</li> <li>4. No hauling in wet conditions</li> <li>5. In dry conditions may want to water road to help with dust.</li> </ol>							
NAME			TITLE			ADDITIONAL SPACE NEEDED	
Leo Weese			Engineering Tech.				







*Mile Post 0.503*





*Mile Post 0.678*





*Mile Post 0.678*





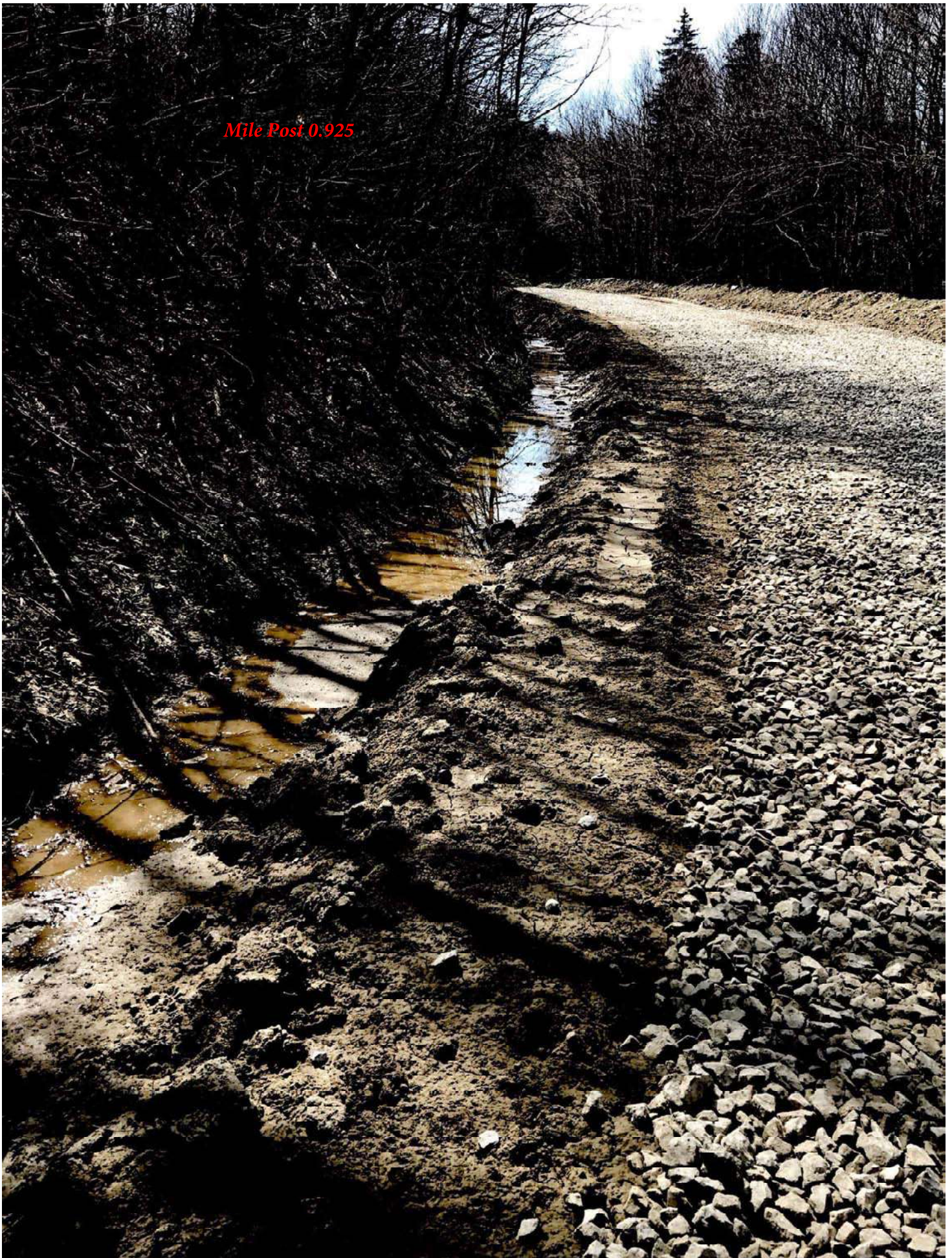
*Mile Post 0.678*





























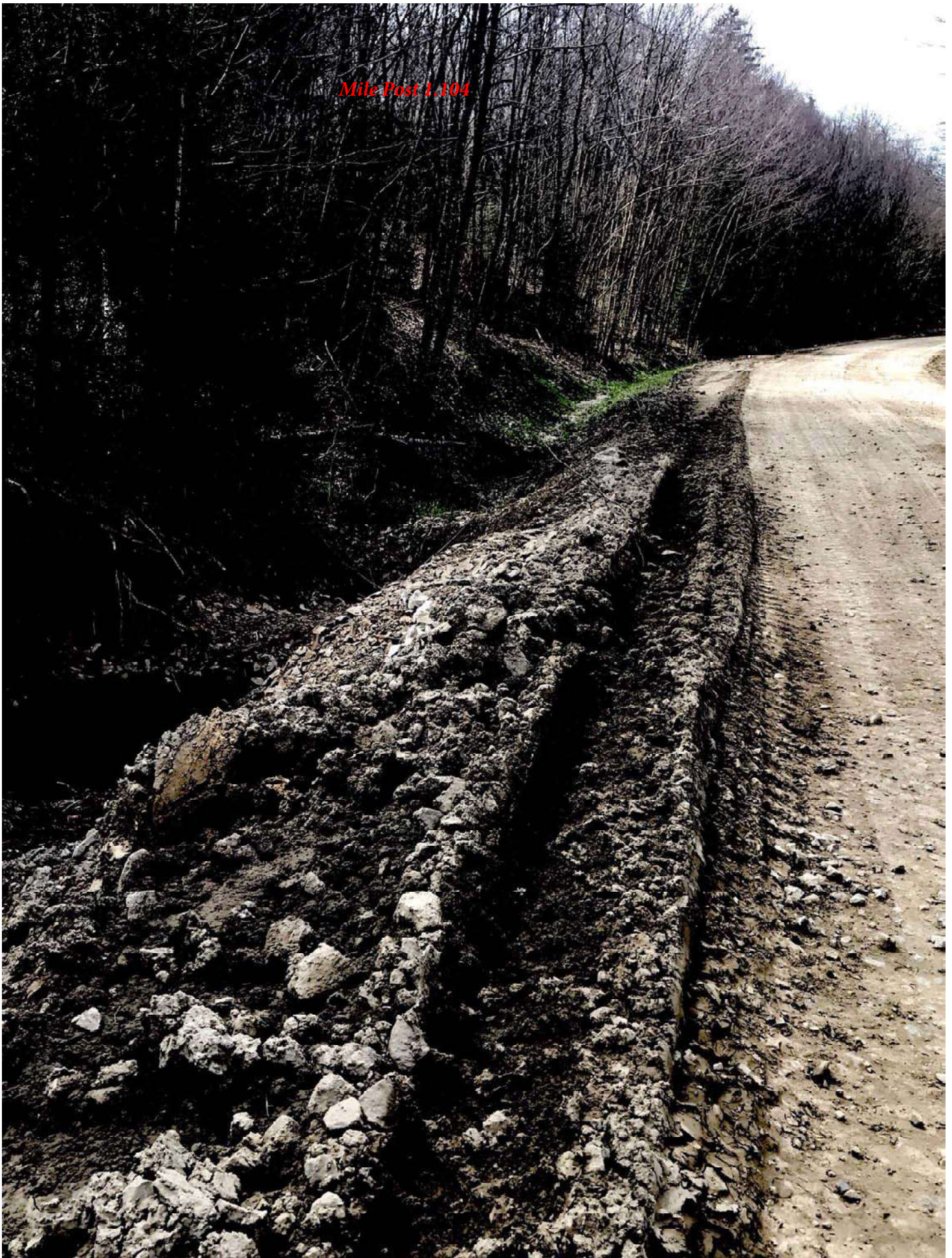




**Mile Post 1.058**









*Mile Post 1.104*







**Jane Bard**  
**Silviculturist**

**Forest Service**  
**Monongahela National Forest, Gauley Ranger District**

**p: 304-846-2695 x5552112**

**f: 304-846-4307**

**[jane.bard@usda.gov](mailto:jane.bard@usda.gov)**

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Richwood, WV 26261

**[www.fs.fed.us](http://www.fs.fed.us)**



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**Exhibit 8**  
**to Standing Declaration of James R. Webb**

## Stevens, Karen -FS

---

**From:** Thomas, Ryan L <[ryan.l.thomas@wv.gov](mailto:ryan.l.thomas@wv.gov)>  
**Sent:** Sunday, May 1, 2022 7:31 PM  
**To:** Jason Miller  
**Cc:** Arbogast, Chad -FS  
**Subject:** [External Email]Re: [EXTERNAL] RE: [EXTERNAL] FR 249 Road Use Permit

**Categories:** Red Category

---

**[External Email]**

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Hello,

Sorry for getting back to y'all so late!!

Unfortunately I won't be able to attend tomorrow due to me being off of work. I will be independently following-up on all road conditions this week.

Chad, if you would like to still meet up with me on the site. We can schedule a time for one of the upcoming days or week. Just let me know.

Thanks

On Thu, Apr 28, 2022 at 9:55 AM Jason Miller <[jmiller@whiteforestresources.com](mailto:jmiller@whiteforestresources.com)> wrote:

Chad,

Count me confirmed for Bear Run on Monday.

Jason C. Miller

---

**From:** Arbogast, Chad -FS <[chad.h.arbogast@usda.gov](mailto:chad.h.arbogast@usda.gov)>  
**Sent:** Thursday, April 28, 2022 9:30 AM  
**To:** Jason Miller <[jmiller@whiteforestresources.com](mailto:jmiller@whiteforestresources.com)>  
**Cc:** Phillips, Robert - FS <[robert.phillips1@usda.gov](mailto:robert.phillips1@usda.gov)>; Hattersley, Jason -FS <[jason.hattersley@usda.gov](mailto:jason.hattersley@usda.gov)>; Weese, Leo - FS <[leo.weese@usda.gov](mailto:leo.weese@usda.gov)>; [RYAN.L.THOMAS@wv.gov](mailto:RYAN.L.THOMAS@wv.gov)  
**Subject:** [EXTERNAL] RE: [EXTERNAL] FR 249 Road Use Permit

I will meet you at the Bear Run guard shack.

*Chad H. Arbogast*

---

**From:** Jason Miller <[jmiller@whiteforestresources.com](mailto:jmiller@whiteforestresources.com)>  
**Sent:** Thursday, April 28, 2022 9:02 AM  
**To:** Arbogast, Chad -FS <[chad.h.arbogast@usda.gov](mailto:chad.h.arbogast@usda.gov)>  
**Cc:** Phillips, Robert - FS <[robert.phillips1@usda.gov](mailto:robert.phillips1@usda.gov)>; Hattersley, Jason -FS <[jason.hattersley@usda.gov](mailto:jason.hattersley@usda.gov)>; Weese, Leo -

FS <[leo.weese@usda.gov](mailto:leo.weese@usda.gov)>; [RYAN.L.THOMAS@wv.gov](mailto:RYAN.L.THOMAS@wv.gov)

**Subject:** Re: [EXTERNAL] FR 249 Road Use Permit

Chad,

Where do you want to meet at Monday at 9:30. We can meet at our mine office or across from the Bear Run Guard shack?

Jason C. Miller

On Apr 28, 2022, at 8:58 AM, Arbogast, Chad -FS <[chad.h.arbogast@usda.gov](mailto:chad.h.arbogast@usda.gov)> wrote:

Jason,

As per our earlier phone conversation, the Forest Service has had complaints about the use of Forest Road 249, specifically road damage and environmental impacts (stream sedimentation) relating to its use/maintenance. An on-site inspection, conducted earlier this week, showed several areas of concern and potential noncompliance with the requirements of the associated Road Use Permit (RUP). This email is to confirm our meeting on Monday, May 2<sup>nd</sup> at 0930, to perform a cooperative on-site inspection, discuss the requirements of the RUP, identify any areas of concern or non-compliance, and discuss remedies.

I look forward to meeting you on Monday,

Chad



Chad H. Arbogast  
FOREST MINERALS TECH/ GREENBRIER DIST. RANGE TECH/ COR/ ER/ RANGE MANAGER  
Forest Service

**Monongahela National Forest**

p: 304-456-3335 x121

f: 304-456-3441

[chad.h.arbogast@usda.gov](mailto:chad.h.arbogast@usda.gov)

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--

*Ryan Thomas*

*Environmental Inspector Specialist*

[Ryan.L.Thomas@wv.gov](mailto:Ryan.L.Thomas@wv.gov)

*WV Department Environmental Protection*

*1159 Nick Rahall Greenway*

*Fayetteville, WV 25840*

*304-574-4465*



**Exhibit 9**  
**to Standing Declaration of James R. Webb**

**SOUTH FORK COAL ROAD USE PERMIT INSPECTION (FR 223 & 249)  
5/2/2022 – 0930Hrs.**

**U.S.F.S. INSPECTOR: Chad H. Arbogast  
COMPANY REP. ON SITE: Jason Miller**

I met with Jason Miller, Representative of White Forest Resources (South Fork Coal), on site at FR 249 this date. Mr. Miller and I reviewed the entire 1.2 miles of FR 249 which is currently under Road Use Permit (RUP) with South Fork Coal (as well as the majority of the entire 16 mile haul road associated with permitted use), and discussed the requirements of the RUP while identifying deficiencies which need remedied.

**The following items were identified and remediations established as the RUP pertains to FR 249:**

- 1) REQUIREMENT - The RUP requires brush to be removed from the road prism from the top of the cut bank to 6 ft below the top of the fill slope. **-SITUATION-Brush has only been removed as needed - REMEDIATION - BRUSH MUST BE REMOVED PRIOR TO RETURNING MAINTENANCE TO FOREST SERVICE - Will begin removing while doing other road maintenance after other more pressing concerns of sedimentation and road instability are addressed.**
- 2) REQUIREMENT - As per the RUP, the entire travelway is to be capped with non-erodible material - Road currently has area where no non-erodible material is evident. **-SITUATION -Has been placed but has sunk and is now covered with mud - REMEDIATION- Permittee is currently crushing sandstone from Blue Knob and hauling, tailgating, rolling material to create a non-erodible surface. In addition, stone is being purchased from a local quarry to supplement the supply. Contractor is working the entire 16 mile haul road (worst sections first) and will be on the Forest Service section by the end of the week. Placement of non-erodible surface will be completed by May 20, 2022.**
- 3) REQUIREMENT - RUP requires road be constructed to accommodate intended use.- **- SITUATION Evidence of base failures, rutting, and improper shaping of the roadway. - REMEDIATION – Permittee has devoted a crew, exclusively to removing base failures and repairing roadway. The permittee is crushing sandstone from the Blue Knob area (approximately 2500 tons per day was Jason's estimate) and utilizing this material to stabilize the road base and reshape the road prism to properly drain. Stabilization fabric is being placed in the worst areas, between the existing surface and the new rock to aid in strengthening the road base. Initial treatment of base failures and reshaping of FR 249 shall be completed by May 20, 2022. Increased maintenance and repair functions will continue throughout hauling operations until road has stabilized and is properly shaped to drain, showing little to no deformity under the loads of daily hauling operations.**
- 4) REQUIREMENT - The RUP requires protection of environmental resources – **-SITUATION - There is evidence that sedimentation is escaping beyond existing sedimentation control devices. Existing Sumps have already been cleaned and new sumps added to help remedy this situation, as required by the WVDEP – REMEDIATION – Permittee will install secondary down stream sediment control devices, below existing sumps on outlet side of pipes and roadway. Silt fence will be placed to perform this function. In line sumps will be added near the berm of the road (temporarily until reshaping of road is complete) to slow water and remove sediment prior to water exiting the road prism through the berm. Straw waddles will be added upstream of existing sump,s on the ditchline side of the road, to creat ditch checks helping to remove sediment prior to water entering sump holes. Berms and disturbed areas not covered with non-erodible material, will be hydosed with approved grass seed mixes to promote vegetative growth and soil stability. Road will be reshaped so that water is directed toward**

**Exhibit 10**  
**to Standing Declaration of James R. Webb**



Rick Webb <rwebb.481@gmail.com>

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**Fw: [EXTERNAL] Coal haul road in candy darter critical habitat**

1 message

---

**Norris, Jennifer L** <jennifer\_l\_norris@fws.gov>  
To: Rick Webb <rwebb.481@gmail.com>  
Cc: "Smrekar, Briana D" <briana\_smrekar@fws.gov>

Tue, Apr 19, 2022 at 1:14 PM

Rick,

Thanks for emailing us. I too hope you are doing well. We apologize for the delay in getting back to you, we have been beyond swamped in our office with the workload coming in.

For this project you mentioned, we did a search for recent projects and could not located any coordination that has occurred with our office and the Forest Service on the Candy Darter for this location at the MNF.

I would suggest reaching out again to the MNF to see if they might have additional details.

I will also reach out to the Forest Service.

Thanks,  
Jenny

Jennifer L. Norris  
West Virginia Field Supervisor  
U.S. Fish and Wildlife Service  
[6263 Appalachian Highway](#)  
[Davis, West Virginia 26260](#)  
Cell Phone: (304) 704 0655  
<http://www.fws.gov/westvirginiafieldoffice/index.html>

---

**From:** Rick Webb <rwebb.481@gmail.com>  
**Sent:** Monday, April 11, 2022 10:37 AM  
**To:** Norris, Jennifer L <jennifer\_l\_norris@fws.gov>; Smrekar, Briana D <briana\_smrekar@fws.gov>  
**Subject:** [EXTERNAL] Coal haul road in candy darter critical habitat

<p><b>This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.</b></p>
--------------------------------------------------------------------------------------------------------------------------------------------

Jennifer and Briana,

Perhaps you can help. I'm looking for information concerning a coal haul road in a watershed that includes candy darter critical habitat.

I've attached a schematic map of the road, dated December 2021 and submitted to the WV Department of Environmental Quality. I've also attached a map showing the eastern extent of the road, which is about 10 miles long. The eastern end of

the road crosses National Forest property (Tract M). I've also attached maps showing the relationship between this National Forest section of the road and the South Fork of the Cherry River designated candy darter critical habitat.

This road has been the subject of WVDEP inspections and enforcement action due to sediment laden runoff to receiving streams. Coal hauling, however, is apparently continuing.

The attached photo shows Panther Camp Run laden with sediment on 4/7/22. (Clear water in the foreground contrasts with Panther Camp.) Additional photos show the same conditions on previous recent dates. Panther Camp Run is a native trout stream that was not previously impacted by this type of sedimentation.

My question for you concerns consultation between the Forest Service and the Fish and Wildlife Service concerning this road and potential impacts to candy darter critical habitat. Has there been any consultation that addresses this road or any Forest Service permitting or authorization of this road?

I recognize that our question should first be addressed to the Forest Service, given that it is the agency responsible for the action in question. The Forest Service, however, has been unresponsive to inquiries. Any info you can provide will be appreciated.

Thank you,

Rick Webb  
540-290-0913

---

#### 4 attachments



**MNF Coal Haul Road - 2.jpg**  
401K



**MNF Coal Haul Road - 1.jpg**  
730K



**Panther Camp 20220407.jpg**  
373K



**kpskyway December 2021.pdf**  
4301K







**Exhibit 11**  
**to Standing Declaration of James R. Webb**



Rick Webb <rwebb.481@gmail.com>

**FW: Coal haul in candy darter critical habitat - Forest Service road question**

1 message

Jones, Shane -FS, Elkins, WV <shane.jones@usda.gov>

To: "Norris, Jennifer L" <jennifer\_l\_norris@fws.gov>, Rick Webb <rwebb.481@gmail.com>

Cc: "Cochran, Shawn -FS" <shawn.cochran@usda.gov>, "Sandeno, Cynthia -FS" <cynthia.sandeno@usda.gov>, "Hattersley, Jason -FS" <jason.hattersley@usda.gov>, "Phillips, Robert - FS" <robert.phillips1@usda.gov>, "Owen, Michael -FS" <michael.owen@usda.gov>, "Stevens, Karen -FS" <karen.stevens@usda.gov>

Tue, Apr 19, 2022 at 5:31 PM

Apologies for sending this email to so many people but I feel obligated to engage all the folks that have spent energy on this.

Rick, hopefully you have all the information you were seeking. My understanding is that the forest service did not conduct ESA Section 7 consultation with the FWS because the only action that was authorized by the FS was the use of an open FS road. Connected actions to projects authorized, funded, or carried out by the Federal government can get convoluted and open to interpretation. More importantly, though, is that because of issues with the road, the FS has taken corrective action and had the company cease hauling on the road until the issues were addressed. I'm not sure where it stands now but if you'd like to conduct a field review or learn more about this project, I would be happy to facilitate.

Although Bob was correct in giving you specifics on officially submitting a FOIA request, I personally would rather you reach out directly to me and I'll do my best to get you the information that you are after. That said, of course, you have every right to pursue the official FOIA request route if you so choose.

Jenny, thank you for looping us into this discussion.



Shane Jones  
Ecosystem Staff Officer

Forest Service

Monongahela National Forest

p: 304-635-4457

[shane.jones@usda.gov](mailto:shane.jones@usda.gov)

1800 Sycamore Street

Elkins, WV, 26241

[www.fs.fed.us](http://www.fs.fed.us)



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From: Sandeno, Cynthia -FS <cynthia.sandeno@usda.gov>

Sent: Tuesday, April 19, 2022 1:23 PM

To: Jones, Shane -FS, Elkins, WV <shane.jones@usda.gov>; Cochran, Shawn -FS <shawn.cochran@usda.gov>



4/7/23, 9:21 AM

Gmail - FW: Coal haul in candy darter critical habitat - Forest Service road question

Cc: Hattersley, Jason -FS <jason.hattersley@usda.gov>; Phillips, Robert - FS <robert.phillips1@usda.gov>  
Subject: Coal haul in candy darter critical habitat - Forest Service road question

Shane and Shawn,

I just saw the email from Jenny Norris with the FWS about the request they received regarding this road. Attached you will find the response that was provided by the Forest to Rick Webb. I just wanted to make sure everyone was in the communication loop.

Sincerely,



Cynthia Sandeno  
Acting Field Representative, State & Private Forestry

Forest Service

Eastern Region, Morgantown Field Office

p: 304-285-1540  
cynthia.sandeno@usda.gov

180 Canfield St.  
Morgantown, WV 26505  
www.fs.fed.us  
USDA Twitter Facebook

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---

From: Phillips, Robert - FS <robert.phillips1@usda.gov>  
Sent: Friday, April 15, 2022 3:37 PM  
To: Hattersley, Jason -FS <jason.hattersley@usda.gov>; Rick Webb <rwebb.481@gmail.com>  
Cc: Sandeno, Cynthia -FS <cynthia.sandeno@usda.gov>; Craig, Thomas - FS, ELKINS, WV <Thomas.Craig@usda.gov>; Arbogast, Chad -FS <chad.h.arbogast@usda.gov>  
Subject: RE: [External Email]Forest Service road question

Mr. Webb,

Jason Hattersley, the acting District Ranger for the Gauley, Marlinton- White Sulphur Ranger District requested me to provide you a response.

Forest Road 249 is currently under a Road Use Permit by South Fork Coal. Road Use Permits are authorizations for usage of Forest Service roads for commercial applications pursuant to Section 4 and Section 6 of the National Forest Roads and Trails Act 16 (U.S.C. 535 and 537).

We are aware of the road damage and suspended road use until a time that the road has been repaired and more conducive to resuming hauling activities. The road use permit includes provisions to ensure adherence to state, local and federal environmental regulations. For questions regarding environmental compliance, please reach out West Virginia Department of Mines or Environmental Protection.

4/7/23, 9:21 AM

Gmail - FW: Coal haul in candy darter critical habitat - Forest Service road question

We are unable to provide the Road Use Permit to you at this time, however, you may submit requests for copies of the authorizations by way of "Freedom of Information Act" (FOIA) requests through the Forest Service (FS) or United States Department of Agriculture (USDA) websites, links in attachment, or you can send them directly to the Monongahela National Forest. If you decide to send the requests directly to the Forest, please send them to the attention of Karen Stevens. Please find and review the attached information to assist you in your request.

If you have any further questions, please feel free to reach out to me.

Bob



Robert Phillips, P.E.  
Technical Services Staff Officer

Forest Service

Monongahela National forest

p: 814-688-9032  
[robert.phillips1@usda.gov](mailto:robert.phillips1@usda.gov)

200 Sycamore Street  
Elkins, WV 26241



Caring for the land and serving people

From: Hattersley, Jason -FS <[jason.hattersley@usda.gov](mailto:jason.hattersley@usda.gov)>  
Sent: Wednesday, April 13, 2022 10:51 AM  
To: Rick Webb <[rwebb.481@gmail.com](mailto:rwebb.481@gmail.com)>  
Cc: Sandeno, Cynthia -FS <[cynthia.sandeno@usda.gov](mailto:cynthia.sandeno@usda.gov)>; Phillips, Robert - FS <[robert.phillips1@usda.gov](mailto:robert.phillips1@usda.gov)>; Craig, Thomas - FS, ELKINS, WV <[Thomas.Craig@usda.gov](mailto:Thomas.Craig@usda.gov)>; Arbogast, Chad -FS <[chad.h.arbogast@usda.gov](mailto:chad.h.arbogast@usda.gov)>  
Subject: RE: [External Email]Forest Service road question

Mr. Webb,

Thank you for reaching out and sharing your questions and concerns on Forest Road 249. I have received your request and have begun seeking the background information and current updates with our Forest Specialist that have been handling this permit. I hope to learn more about this permit and share accordingly in the near future.

Sincerely,

Gmail - FW: Coal haul in candy darter critical habitat - Forest Service road question

4/7/23, 9:21 AM



Jason Hattersley  
Acting District Ranger

Forest Service

Monongahela National Forest,  
Gauley, Marlinton-White Sulphur  
Ranger Districts

p: 304-636-2144  
c: 540-460-2894  
jason.hattersley@usda.gov

410 Main St E  
White Sulphur Springs, WV 24986  
www.fs.fed.us



Caring for the land and serving  
people

From: Rick Webb <rwebb.481@gmail.com>  
Sent: Wednesday, April 13, 2022 10:06 AM  
To: Hattersley, Jason -FS <jason.hattersley@usda.gov>  
Cc: Sandeno, Cynthia -FS <cynthia.sandeno@usda.gov>; Stevens, Karen -FS <karen.stevens@usda.gov>; Dezelin, Sarah - FS, Richwood, WV <Sarah.Dezelin@usda.gov>; Messerschmidt, Kody -FS <kody.messerschmidt@usda.gov>; Wilson, Will- FS <William.Wilson@usda.gov>  
Subject: [External Email]Forest Service road question

[External Email]  
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Mr. Hattersley,

I just learned that you are the new Acting District Ranger for the Gauley District. So, my questions, below, concerning Forest Road 249 should be directed to you. Specifically, I've asked: What type of Forest Service approval or permit was required for use of the road by a private company, when the approval or permit was granted, for what period it is in effect, and are there any conditions associated with the permit or approval? I would also like to see the permit or approval document and any inspection reports.

In addition, can you tell me, has consultation with the US Fish and Wildlife Service concerning potential impacts of this road on candy darter critical habitat taken place?

Thank you,

Rick Webb

Gmail - FW: Coal haul in candy darter critical habitat - Forest Service road question

4/7/23, 9:21 AM  
540-290-0913

On Wed, Apr 13, 2022 at 9:07 AM Rick Webb <[rwebb.481@gmail.com](mailto:rwebb.481@gmail.com)> wrote:

Ms. Messerschmidt,

I have still not obtained information concerning the Forest road in question. I made the request 25 days ago. Can you tell me when a response will be provided? Is a formal FOIA request required to obtain this information?

I have copied this request to Forest NEPA planners, Sarah Dezelin and Karen Stevens, as they are often involved in permit review and perhaps can provide the requested info.

Thank you,

Rick Webb  
540-290-0913

On Sun, Mar 20, 2022 at 9:38 PM Rick Webb <[rwebb.481@gmail.com](mailto:rwebb.481@gmail.com)> wrote:

Ms. Messerschmidt,

I've attached a couple of map images that provide more perspective on the location of the road in question.

Thank you,

Rick Webb

----- Forwarded message -----  
From: Sandeno, Cynthia -FS <[cynthia.sandeno@usda.gov](mailto:cynthia.sandeno@usda.gov)>  
Date: Sun, Mar 20, 2022 at 7:03 PM  
Subject: RE: [External Email]Forest Service road question  
To: Rick Webb <[rwebb.481@gmail.com](mailto:rwebb.481@gmail.com)>  
CC: Messerschmidt, Kody -FS <[kody.messerschmidt@usda.gov](mailto:kody.messerschmidt@usda.gov)>

Rick,

I am on a detail to State and Private Forestry and am not currently working on the Monongahela National Forest. I am cc'ing Acting District Ranger Kody Messerschmidt to this message so she can respond to your request.

Sincerely,





Cynthia Sandeno  
Acting Field Representative, State & Private Forestry

Forest Service

Eastern Region, Morgantown Field Office

p: 304-285-1540  
cynthia.sandeno@usda.gov

180 Canfield St.  
Morgantown, WV 26505  
www.fs.fed.us



Caring for the land and serving people

**From:** Rick Webb <nwebb.481@gmail.com>  
**Sent:** Saturday, March 19, 2022 11:23 AM  
**To:** Sandeno, Cynthia <FS <cynthia.sandeno@usda.gov>  
**Subject:** [External Email] Forest Service road question

[External Email]

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Ms. Sandeno,

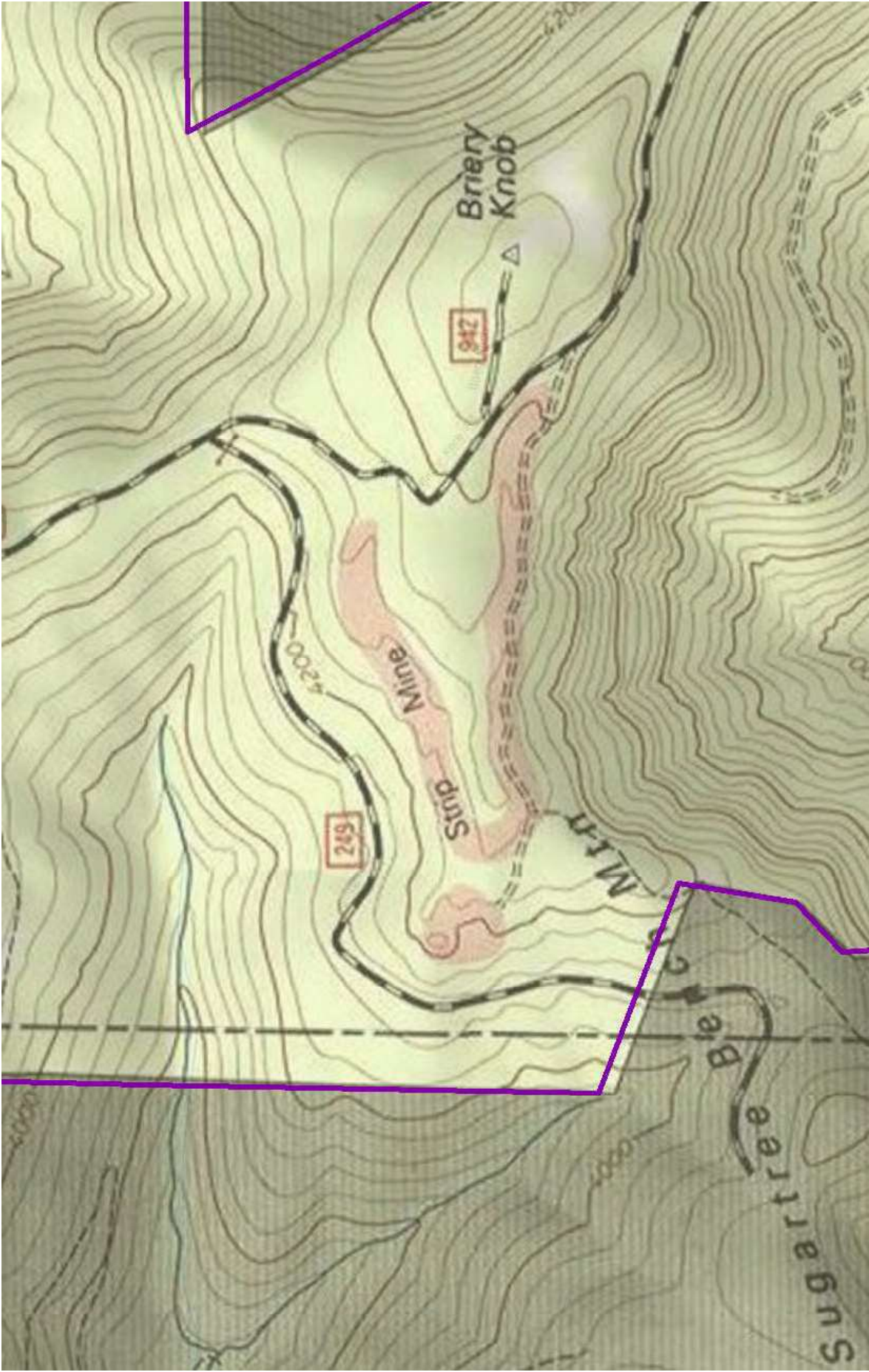
I have a question concerning a FS system road in the Cranberry-Spring Creek project area. The road in question is shown in the map image below. The road number is 249. It is currently being used as a coal haul road. I'd like to know what type of Forest Service approval or permit was required for use of the road by a private company, when the approval or permit was granted, for what period it is in effect, and any conditions associated with the permit or approval. I would also like to see the permit or approval document and any inspection reports.

The road in question, located on both private and FS land, has been permitted by the WV Department of Environmental Protection as a coal haul road. It is concerning because it drains to candy darter critical habitat and it has been the source of stream sedimentation.


Thank you,

Rick Webb

Gmail - FW: Coal haul in candy darter critical habitat - Forest Service road question



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160K

ditchlines and can be treated more effectively prior to leaving the project site.

**RESTRUCTURING OF EXISTING SUMPS AND INSTALLATION OF ADDITIONAL SEDIMENT CONTROL FEATURES SHALL BE COMPLETED BY MAY 20, 2022. HYDROSEEDING OPERATIONS SHALL BE COMPLETED WITHIN 30 DAYS (MAY 31, 2022), RESHAPING OF ROAD IS A CONTINUOUS ENDEAVOR AND WILL BE COMPLETED AS NON-ERODIBLE MATERIAL IS PLACED ON ROADWAY AND GRADES MANIPULATED**

- 5) REQUIREMENT - The RUP requires upgrading, lengthening, or replacing culverts as needed to accommodate use. —**SITUATION- There is evidence of pipes starting to mishape and crush, under existing load stresses, in multiple locations. Pipes are still functioning. — REMEDIATION —** The permittee is aware of the situation and has ordered a load of pipe to begin replacing culverts on the haul road. Several locations have already been identified and all pipes will be inspected along the entire haul route. **Pipe is due on project in approximately 3 week (May 23, 2022) and replacement operations will begin on the 1.2 mile section currently under permit with the U.S. Forest Service. Work will commence once sediment control issues are addressed and stabilization of road base has been completed.**

The permittee is currently taking steps to remedy erosion and sedimentation issues as well as road stability issues, as directed by the WVDEP, and as required through there mining permit for haul roads. Precident for repair has been given to the worst areas as identified by the permittee and the WVDEP inspector, Ryan Thomas. Consideration being given to the fact that issues have been occuring along the entire 16 mile haul route and that the existing condition on FS road 249 is not excessive, the permittee has been given time to address the identified issues to come into compliance with the Forest Service Road Use Permit.

**The following items were identified and remediations established as the RUP pertains to FR 223:**

- 1) REQUIREMENT - The RUP requires the contractor repair damages caused by use of the roadway under the permit. - **SITUATION -Culvert at the entrace of FR 223, at the intersection with State Route 32, has had the outlet end of the culvert crushed by truck swinging inside the established roadway. — REMEDIATION-** Culvert shall be repaired/replaced and outlet ditch cleaned to re-establish proper drainage in the area. I recommend if culvert is replaced it be lengthened at least 5 ft to prevent recurring damage. **Issue should be addressed as soon as possible to prevent overflow and potential road/resource damage.**
- 2) REQUIREMENT - The permittee has agreed to perform maintenance on the roadway to offset fees associated with the RUP. Permittee is performing grading under that required maintenance. - **SITUATION - Minor issues with grading that has been performed such as small sections of berms being left on inside and outside of graded area, washboarding in roadway, minor pot holes, and sections of ditchlines which need cleaned. — REMEDIATION —** Area is graded often. Issues will be addressed during normally scheduled grading.
- 3) -**SITUATION -Hauling of commercial stone was not addressed in initial calculations for fees on FR 223 in the RUP. REMEDIATION -** Stone hauling will need to be considered at year end when final actual use rates are calculated.
- 4) REQUIREMENT - The permittee has agreed to perform maintenance on the roadway to offset fees associated with the RUP. Permittee is performing grading under that required maintenance. - **SITUATION - Heavy use of commercial stone trucks hauling stone to project site on FR 249, as well as grading and winter plowing activities have caused loss of stone from the road prism on FR 223. — REMEDIATION —** Stone will be applied to FR 223 as part of the road maintenance to offsett fees for the RUP.